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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Market Entry and Regulation of)
Foreign Affiliated Entities)

) IB Docket No. 95-22
) RM-8355
) RM-8392
)

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APR 11 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF SWIDLER & BERLIN, CHARTERED

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EXECUTIVE SUMMARY

Swidler & Berlin, Chartered ("S&B"), a law firm representing several new international telecommunications market entrants and emerging competitive international telecommunications carriers, respectfully requests that the Commission modify, on an expedited basis, its international private line resale policy to permit carriers to provide service to "points beyond" the equivalent country when the Commission grants a carrier Section 214 authority to serve a specified country. The current policy serves to frustrate rather than promote the goals of the Commission's private line resale policy, without providing any offsetting public interest benefits. The points beyond restriction needlessly impairs the ability of U.S.-owned carriers to establish overseas operations that would be permitted under foreign law. The Commission's current policy should be re-evaluated on an expedited basis. Permitting routing of traffic between the U.S. and third countries through leased lines between the U.S. and designated equivalent locations will encourage development of international services competition and place increased pressure on foreign governments to open their markets for telecommunications services. The Commission's current policy restricting "points beyond" service impairs the ability of U.S.-owned carriers to establish competitive service offerings in niche markets abroad, because it places unnecessary restrictions upon the routing of international resold private line service. A revision to that policy would benefit the public interest, by promoting the continued competitive character of the U.S. international services market, by encouraging increased global competitiveness by U.S. telecommunications carriers, by increasing the incentive for closed foreign markets to adopt more open policies, by placing additional pressure on above-cost

accounting rates, and by lowering the prices consumers pay for telecommunications services around the world. The Commission's "equivalency" policy should not be applied to restrict routing beyond the "equivalent" country. If the regulations of an equivalent country permit both inbound traffic from the U.S. to be routed to third countries, and third country traffic to be terminated through the equivalent country to the United States, the traffic flows between the equivalent country and the U.S. will be multi-directional, and will not constitute "one-way" resale. If the policies of the "equivalent" country would not restrict such "points beyond" routing, the Commission should not reach out to points beyond U.S. borders to regulate traffic to limit how traffic may be routed beyond the equivalent country, or to restrict what traffic may be routed through the equivalent country to the U.S. (or through the U.S. to points beyond). Permitting "and beyond" routing through equivalent countries would create added incentive for countries to establish "equivalent" policies, and thereby reap the benefits of a Commission "equivalency" determination. In addition, allowing carriers to establish alternate routing arrangements through the equivalent countries actually should result in lower costs for service to EU countries by placing pressure on European administrations to reduce accounting rates with the United States to avoid traffic re-routing and the resulting possible loss of settlements revenue for directly routed traffic. If the Commission authorizes routing via equivalent countries to third countries (where permitted by foreign law), U.S. carriers could establish themselves in foreign markets, and be in a position to take advantage of competitive opportunities as foreign markets liberalize within the next few years.

The apparent origin of "and beyond" routing restrictions was the "straw argument" of by large facilities-based carriers about a so-called "settlements deficient." However, the

Commission should have in its possession adequate data to demonstrate that some large carriers' "country-direct" and other related U.S. inbound service offerings contribute a far greater proportion of the so-called "settlements deficit" than the proportion of the market share that small private line resellers can ever hope to capture. Unsupported and speculative claims about "settlements impact" should not preclude the development of more pro-competitive policies.

Similarly, the Commission should be skeptical of specious and unsupported claims of "stranded investment." Arguments that the existing outdated system of preserving market power for dominant international carriers to recover their investments at the expense of competition and consumers should be as outdated and discredited for international services as it has proven to be in the domestic market over the last twenty years. Maintaining "and beyond" restrictions limits routing flexibility of smaller carriers, and thereby stymies innovation, and new market entry. An expanded Commission policy permitting routing beyond the initial equivalent location will bolster the development of "gateways" through liberalized foreign markets, and provides alternative routing possibilities to provide service to countries where "world alliance" or "strategic partnerships" might otherwise limit incentives to market opening.

Americans frequently work, travel, and make calls beyond this nation's borders, and they increasingly expect more efficient and affordable telecommunications services for both their domestic and international service needs. While both domestic and foreign legal and regulatory policies for international telecommunications services continue to evolve, it is important that the Commission appreciate that policies based on the traditional correspondent services model may not adequately address questions of market access, undue discrimination and potential

anticompetitive effects that arise in today's evolving telecommunications market, where carriers seek entry on both ends of international circuits.

If various global markets will permit entry through some form of resale of services from a third country, the U.S. should permit arrangements allowing U.S.-owned resale carriers and their U.S.-owned foreign affiliates to send or receive traffic from that country, if the traffic is routed through an equivalent country. Giving U.S.-owned resale carriers the opportunity to become established in foreign jurisdictions will allow development of increased price and service competition to global alliances and ventures formed by larger facilities-based carriers.

S&B respectfully encourages the Commission to reevaluate its "points beyond" policy, and not continue to assume that the U.S. public interest is congruent with the interests of the large facilities-based carriers who have historical dominance in international service offerings. The American experience teaches us to respect and encourage the scrappy entrepreneur who finds a niche, makes a product better, sells a service for a lower price. It is disingenuous for facilities-based companies to advertise and promote "country direct" arrangements and then argue that the specters "settlements deficit" and "stranded investment" should dictate restrictions on flexible routing options.

Wherefore, S&B respectfully encourages the Commission to decide, on an expedited basis in this proceeding, to remove its current restrictions upon routing traffic to "points beyond" deemed to be "equivalent" markets by this Commission. The Commission should issue an order that expressly permits both "equivalent foreign countries and the U.S. to serve as hubs for traffic that is transported to the U.S. or the equivalent country via a private line and continues to another country. Such action will promote increased liberalization of foreign markets and

thereby benefit citizens of the United States, as well as consumers and businesses who use telecommunications services throughout the rest of the world.

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COMMENTS OF SWIDLER & BERLIN, CHARTERED

Swidler & Berlin, Chartered ("S&B"), by its undersigned attorneys, as a law firm representing several new international telecommunications market entrants and emerging competitive international telecommunications carriers, hereby submits comments on the Notice of Proposed Rulemaking ("*NPRM*")^{1/} in the above-captioned proceeding. These Comments respectfully request that the Commission modify, on an expedited basis, its international private line resale policy to permit carriers to provide service to "points beyond" the equivalent country when the Commission grants a carrier Section 214 authority to serve a specified country. As shown below, the current policy serves to frustrate rather than promote the goals of the Commission's private line resale policy. Without providing any offsetting public interest benefits, the "points beyond" restriction needlessly impairs the ability of U.S.-owned carriers to establish overseas operations that would be permitted under foreign law, and thus the restriction should be removed as contrary to the public interest.^{2/}

^{1/} FCC 95-53, released February 17, 1995.

^{2/} These comments have been served upon all parties who filed comments upon AT&T's Petition for Rulemaking in RM-8355. Swidler & Berlin respectfully encourages the Commission and parties to address these issues in this proceeding.

I. INTRODUCTION - REMOVAL OF RESTRICTION ON "POINTS BEYOND" SERVICE WILL PROMOTE COMPETITION AND SHOULD BE ADOPTED ON AN EXPEDITED BASIS.

The Commission's current approach restricts routing via resold international private lines of telecommunications traffic originating in the United States to "points beyond" designated equivalent foreign points. It also prohibits routing of calls originating in non-equivalent countries, through "equivalent" points, in the return direction to the United States. This policy should be re-evaluated on an expedited basis. As detailed below, re-evaluation of the Commission's policy is in the public interest. Permitting routing of traffic between the U.S. and third countries through leased lines between the U.S. and designated equivalent locations will encourage development of international services competition and place increased pressure on foreign governments to open their markets for telecommunications services.

The proposed modification of the current Commission policy would not eliminate the requirement that the foreign end of a resold international private line used for carriage of switched traffic to or from the U.S. originate or terminate in an "equivalent" country. Thus, it would retain the "equivalency" requirement with respect to the U.S.-touching leg of a routing arrangement. However, under the proposed revised policy, there would no longer be a restriction on continuation of the traffic to third country "points beyond," regardless of whether the ultimate traffic origination or termination points were located in equivalent or non-equivalent countries.

The greater routing flexibility provided competing carriers by the elimination of the current "points beyond" restriction would promote achievement of the three basic goals enunciated by the Commission in this proceeding: 1) to encourage effective global market competition for communications services; 2) to prevent anticompetitive conduct in the provision

of international services and facilities; and 3) to encourage foreign governments to open their communications markets.^{3/} As the Commission recognizes, the focus of telecommunications providers has become increasingly global over the last several years.^{4/} The Commission accordingly understands that promotion of effective competition in the global market should be a primary goal at this time.^{5/} Global competition remains highly asymmetric,^{6/} and encouragement of foreign market liberalization is a key means of achieving healthier competition both at home and abroad.^{7/}

Because it places unnecessary restrictions upon the routing of international resold private line service, however, the Commission's current policy restricting "points beyond" service impairs the ability of U.S.-owned carriers to establish competitive service offerings in niche markets abroad and to utilize least-cost routing to configure their networks efficiently. A revision to that policy would benefit the public interest, by promoting the continued competitive character of the U.S. international services market, by encouraging increased global competitiveness by U.S. telecommunications carriers, by increasing the incentive for closed foreign markets to adopt more open policies, by placing additional pressure on above-cost accounting rates, and by lowering the prices consumers pay for telecommunications services around the world.

^{3/} *NPRM* at 12, para. 26.

^{4/} *Id.* at para. 20.

^{5/} *Id.* at para. 27.

^{6/} *Id.* at para. 28.

^{7/} *Id.* at para. 31.

The Commission need not delay implementing the proposals suggested herein until issuance of a comprehensive final order addressing all matters that may be considered in this *NPRM*. These comments request a specific and clearly defined modification to the existing policy that will further competition in international telecommunications markets. Given the substantial public interest justification for the proposed policy modifications demonstrated herein, these issues should be addressed on an expedited basis, perhaps through a separate "Phase I" order.

II. THE CURRENT POLICY PROHIBITING "POINTS BEYOND" SERVICE BY INTERNATIONAL PRIVATE LINE RESELLERS IS NOT ESSENTIAL TO THE COMMISSION'S EQUIVALENCY POLICY BUT RATHER IS COUNTER-PRODUCTIVE.

A. Equivalency Policy

The Commission currently requires carriers that lease interconnected international private line facilities for the provision of international resold switched services ("private line resale") to make an "equivalency" showing in order to obtain authority to provide service to specified foreign countries.^{8/} Under the current policy, when the Commission authorizes service to the "equivalent" foreign point, it restricts routing of service from the United States to the specified country only, and from the specified equivalent country to the United States only. For example, the Commission's Section 214 orders typically include the following standard ordering clause restricting the carrier's private line resale authority:

IT IS FURTHER ORDERED that the authority granted herein to resell international private lines for the provision of switched service between the United States and the United Kingdom is limited to the provision of such services between the United States

^{8/} *Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II Report and Order, 7 FCC Rcd 559 (1992) ("International Resale Order"); 47 C.F.R. 63.01(k)(5).

and the United Kingdom only--that is, private line which carry traffic that originates in the United and terminates in the United Kingdom, or traffic which originates in the United Kingdom and terminates in the United States.^{9/}

The Commission also requires U.S. facilities-based carriers^{10/} to place restrictions in their international private line tariffs stating that appropriate international resale authorization from the Commission must be obtained, and that a demonstration of equivalent resale opportunities must be made to the Commission, prior to a carrier's offering resold international private line service to third parties.^{11/}

S&B does not challenge the basic structure of the Commission's equivalency requirement for private line resale whereby the Commission permits switched services resale of international

^{9/} *LDDS Communications, Inc., et al*, Memorandum Opinion, Order and Authorization (DA 95-511, released March 22, 1995), (granting Section 214 authority to resell international private lines between the U.K. and the U.S. for switched and private line services).

^{10/} As IDB points out in its Petition for Rulemaking (FCC File No. RM-8392), there currently is some ambiguity and asymmetry in the definition of facilities-based carrier (Petition at 5). *See also NPRM* at para. 9, where the Commission states that "because the issues involved in adopting such a definition directly relate to how we regulate U.S. international carriers, we will address IDB's petition in this rulemaking."

^{11/} *See, e.g.* MCI Telecommunications Corp., 9 FCC Rcd 6423 (1994) at para. 3, which contains the following standard language the Commission now includes in its facilities-based Section 214 authorizations:

[O]ur authorization of MCI to provide private lines is limited to the provision of such private lines only between the United States and Marshall Islands and Micronesia--that is, private lines which originate in the United States and terminate in Marshall Island and Micronesia or originate in the Marshall Islands or Micronesia and terminate in the United States. In addition, MCI may not--and MCI's tariff must state that its customers may not--connect private lines provided over these facilities to the public switched network at either the U.S. or Marshall Islands or Micronesia end, or both, for the provision of international basic telecommunications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the Marshall Islands or Micronesia affords resale opportunities equivalent to those available under U.S. law, in accordance with [the International Resale Order].

private lines interconnected to the public switched network ("PSN") only to foreign countries that allow such resale to occur in both directions. This "equivalency policy" has had notable success in encouraging the opening of certain foreign markets to effective competition. However, retention of the "points beyond" restriction is not essential for achievement of the policy goals underlying the private line resale policy. Rather, as shown below, it advances the private interests of the largest facilities-based carriers at the expense of the public interest in promoting competition in markets worldwide and facilitating market penetration by competitive U.S. carriers abroad. S&B therefore urges the Commission to eliminate its restrictive "points beyond" policy.

B. Origin of "Points Beyond" Restriction

The restriction on service to "points beyond" appears to have had its origin in the general requirement long applicable to facilities-based carriers that they not utilize transit arrangements through authorized intermediate points to serve countries to which they do not have direct authority. This facilities-based restriction does not, however, severely restrict the routing alternatives available to facilities-based carriers. Facilities-based carriers, in contrast to private line resellers, may provide switched and private line services, either through a direct or a transiting arrangement, so long as they are authorized to serve the destination country. The Commission permits facilities-based carriers to establish transit/overflow arrangements through third countries, and facilities-based carriers may establish such arrangements when traffic flows are not sufficient for direct arrangements, to provide routing diversity and accommodate overflow traffic, or to serve countries where direct operating agreements are not in place. Thus, for example, if a carrier does not have direct facilities arrangements to France, the carrier may

establish service via a transit/overflow arrangement from the U.S. through a third country to France, the terminal country. "Transit" arrangements can take many forms.^{12/}

Unlike the "points beyond" restriction imposed on resellers international private line service, the requirement that a facilities-based carrier obtain authority to serve the destination country does not restrict flexible routing arrangements to serve a specified country, once Section 214 authority is obtained to serve that country. In contrast, the restriction upon routing international private line traffic to "points beyond" adversely affects the ability of international private line resellers to configure their networks efficiently and aggressively compete with facilities-based carriers in world markets, thus limiting the downward pressure on accounting rates exerted by competitive resold services.

C. Development of "Points Beyond" Restriction

The Commission articulated the boundaries of the current equivalency policy over time, on a country-by-country basis, taking into account the facts and circumstances presented by competitive policies of each country for which an equivalency determination is sought. The Commission's first determination under its equivalency policy permitted *fONOROLA* and EMI to resell private line service between the United States and Canada.^{13/} However, the Commission restricted the authority of resellers to route the traffic on resold private lines between only Canada and the U.S. and did not permit any third country routing. In *ACC Global/Alanna*,^{14/}

^{12/} See, e.g., MCI Petition for Declaratory Ruling, filed January 27, 1995 (ISP-05-004, "MCI Petition"); and Comments supporting the MCI Petition filed on March 10, 1995, by AT&T.

^{13/} *fONOROLA/EMI*, 7 FCC Rcd. 7312 (1992), *reconsidered*, 9 FCC Rcd 4066 (1994).

^{14/} 9 FCC Rcd 6240 (1994).

however, where the Commission clarified that the Canadian routing restrictions were adopted "because of unique routing restrictions in Canada,"^{15/} and found that the international resale policy would not be undermined by the routing of U.S. international private line traffic through one "equivalent" country to a third "equivalent" country, provided that the reseller is authorized to provide service to the third country, and it had determined that the third country offers equivalent resale opportunities.^{16/}

D. Specious Basis of "Points Beyond" Restriction

However, while recognizing that "private line resale provides additional competitive pressures in foreign markets that could lead to lower rates and prices for consumers."^{17/} the Commission nevertheless restricted the authority to provision of private line services originated and terminated between the U.S. and the U.K. only and announced an intention to monitor traffic reports for any detectable shift in traffic patterns between the United States and the member states of the European Union ("EU").^{18/} Although the Commission acknowledged that in EU countries, EU regulations permit both European and U.S. owned companies to provide

^{15/} *Id.* at 6266, n. 78.

^{16/} *Id.* at 6266, para. 47. The Commission rejected AT&T's argument that the imposition of routing restrictions would not prevent re-routing of U.S. destined traffic through the U.K., as well as AT&T's self-serving suggestion that the solution to such routing concerns was to obtain a commitment from the U.K. to grant U.S. carriers facilities-based authority, and withhold an equivalency determination until facilities-based licenses were issued. The Commission also rejected AT&T's suggestion that the Commission only authorize resale of international private line interconnected at the U.K.-end only as a "test" of the equivalency of the U.K. market (at n. 91).

^{17/} *Id.* at 6267.

^{18/} *Id.* at 6268.

one-way or two-way voice service routing of traffic between "closed user groups"^{19/} in different EU countries, the Commission failed to consider that prohibiting "points beyond" routing throughout the EU through an equivalent country (such as the U.K.) back to the U.S., and from the U.S. through the equivalent country to the rest of the EU, would foreclose U.S.-owned carriers from offering a full range of service offerings to these markets, and overlooked the benefits that such competition would promote through increased pressure on non-equivalent EU countries to liberalize their markets to avoid traffic being routed through equivalent countries.

Thus, a practice that began as a mere reminder to facilities-based carriers that they must have proper authority before serving a country indirectly, as well as directly, has been extended into a limitation unnecessarily restricting the flexibility of resale carriers and new market entrants. In the context of imposing a "points beyond" restriction, however, the concern expressed by large facilities-based carriers about the "settlements deficient" is a "straw man." The Commission should have in its possession adequate data to demonstrate that some large carriers' "country-direct" and other related U.S. inbound service offerings contribute to a far greater proportion of the so-called "settlements deficit" than the proportion of the market share that small private line resellers can ever hope to capture. Unsupported and speculative claims about "settlements impact" should not preclude the development of more pro-competitive policies.

^{19/} *Id.* at 6266-6268, n. 80-84. The Commission states that "An example of what may constitute a CUG would be communications between members of a integrated business community encompassing a corporation, partially-owned subsidiaries, its employees working outside company premises, major suppliers and customers or dealers." *Id.* at n. 80.

Similarly, the Commission should be skeptical of specious and unsupported claims of "stranded investment."^{20/} The Commission should be aware that AT&T (and other large carriers) have in recent years "written down" substantial cable plant due to technological obsolescence. The quality of telecommunications service has improved, due to the pressure of increased competition that stimulated investment in fiber optics and digital switches, for example. This improved service quality did not cost consumers more for competitive service offerings. Increased competition has led to lower domestic prices, even after "write downs" of the costs of obsolete or outdated plant.^{21/} Arguments that the existing outdated system of preserving market power for dominant international carriers to recover their investments at the expense of competition and consumers should be as outdated and discredited for international

^{20/} See AT&T's "Comments in Support" in *Sprint Communications Company L.P.* (ISP-95-004), filed March 10, 1995 at 27, where AT&T states:

[I]f international traffic is routed based on the unilateral decision of one carrier, the existing facilities established by the U.S. and foreign carriers to route traffic according to agreed-upon routes will be subject to the risk that those facilities will become stranded.

^{21/} In a speech given on January 11, 1994, outlining the Administration's telecommunications policy positions, Vice President Al Gore reiterated the importance of telecommunications competition to the stimulation of technological innovation and price reductions, stating:

Today, we must choose competition again and protect it against both suffocating regulation on the one hand and unfettered monopolies on the other. To understand why competition is so important, let's recall what has happened since the breakup of AT&T ten years ago this month. As recently as 1987, AT&T was still projecting that it would take until the year 2010 to convert 95% of its long distance network to digital technology. Then it became pressed by the competition. The result? AT&T made its network virtually 100% digital by the end of 1991. Meanwhile, over the last decade the price of interstate long distance service for the average residential customer declined over 50%.

services as they have proven to be in the domestic market over the last twenty years.^{22/} Thus, contrary to the self-serving arguments of the largest facilities-based carriers, allowing routing of traffic through a country found to be "equivalent" (and thus having a liberalized regime and permitting two-ended resale) to third countries would not be fatal to the one-way resale prohibition or have a disastrous impact on U.S. economic interests. Removal of the "points beyond" restriction will not have a significant impact on the settlements deficit, given that attendant settlements by-pass will be small in scope and may be expected to likely occur initially more outbound from the U.S.,^{23/} that the facilities-based carriers' own "country direct" and "world direct" services represent a huge (if they are of deliberately concealed magnitude) segment of the outbound traffic, and that call-back services (whose lawfulness has now been

^{22/} Existing dominant carriers employ a variety of regulatory arguments in attempt to preserve the status quo and limit competitive entry. For example, AT&T continues to file "Petitions to Deny" virtually every application in which a reseller seeks an equivalency determination. *See, e.g.,* AT&T Corp. Petition to Deny, File No. ITC-95-125 (filed February 21, 1995). As Communications Telesystems International's Opposition to Petition to Deny (filed March 6, 1995 in the same docket) points out (at 3), AT&T seeks to delay and restrain international private line resale competition, while forging expanding alliances with monopoly and former monopoly PTTs around the world.

^{23/} The greatest initial utilization of the new flexibility may be in the area of hubbing arrangements for U.S.-outbound traffic. These clearly reduce the settlements deficit by reducing the amount of "settled" outbound switched traffic overall and on the highest-cost routes, and by encouraging carriers on the by-passed routes to lower accounting rates for direct services and leased lines to avoid traffic diversion through the "equivalent" hub countries. To the extent that bypass occurs in both directions, it will mean that U.S. carriers have been able to make a business case for competition in foreign niche markets, which has long-term benefits to U.S. interests, and promises substantial reductions in settlements over the long-term. Overall, removal of the restriction clearly promotes increased downward pressure on accounting rates exerted by resale and bypass to reduce the magnitude of any settlements outpayment even if (which is to be desired) calling volume increases.

given the U.S. Department of State *imprimatur*)^{24/} also substantially distort the settlements flow. Further, even if there were a resulting short-term increase in the settlements imbalance, it would merely deprive the largest facilities-based carriers of above-cost based return traffic payments that in essence represent monopoly profits wrested from consumers without market power.

Moreover, far outweighing any temporary concerns about increases in the settlements deficit, retention of the restriction severely restricts the flexibility of resellers and other competitive carriers to flexibly configure their networks to achieve operating efficiencies and maintain their competitive positions in the U.S. international services markets. Even more significantly, at the very time when the U.S. should be encouraging and supporting the efforts of pioneering U.S. carriers to establish themselves in niche markets abroad to gain favorable reputations that will give them a foothold when such markets become fully competitive in a very few years, the Commission's "points beyond" restriction is a major obstacle to carriers taking advantage of the available liberalized market opportunities either by expressly precluding their market participation or by prohibitively increasing the costs of doing so.

IV. A NEW POLICY PERMITTING MORE FLEXIBLE ROUTING SHOULD BE ESTABLISHED.

Therefore, the Commission's "equivalency" policy should no longer restrict routing beyond the "equivalent" country. If the regulations of an equivalent intermediate "hub" country permit both inbound private line traffic from the U.S. to be routed to third countries, and third

^{24/} Letter to Reed Hundt, Chairman of the Federal Communications Commission, from Amb. Vonya B. McCann, U.S. Coordinator, International Communications and Information Policy, dated March 22, 1995.

country-originated traffic to be terminated through private lines between the equivalent country and the U.S., the traffic flows between the equivalent country and the U.S. will be multi-directional, and will not constitute "one-way" resale. Rather, there will be bypass of the high-cost non-equivalent direct routes to the third country in favor of routings through the competitive hub country market, with commensurate savings, and no adverse impact on the settlements deficit. Where the policies of an "equivalent" country would not restrict such "points beyond" routing, the Commission should not reach out to "points beyond" the U.S. borders to regulate traffic routing beyond the equivalent country, or to restrict what traffic may be routed through the equivalent country to the U.S. (or through the U.S. to "points beyond").^{25/} It is clearly counter to the overall U.S. public interest for the Commission's points beyond policy to constitute the sole barrier to flexible, competitive routing arrangements, or to stand in the way of U.S. carriers' taking advantage of all liberalized market opportunities available to them abroad prior to full liberalization and open to competition.

Significantly, even AT&T, in its "Comments in Support" of MCI's Petition for Declaratory Ruling,^{26/} has asserted that "in fact, providing international connectivity in foreign

^{25/} In this connection, the Commission also should allow carriers with facilities-based authorizations, as well as private line resale authorizations, to use a combination of direct-owned facilities and private line arrangements for transit through the U.S. of traffic from an equivalent country to a facilities-based or otherwise permissible points beyond traffic. Otherwise, new U.S. international carriers will be disadvantaged vis-a-vis monopoly PTTs for routing of global telecommunications markets. AT&T, which has recently received U.K. private line resale authority, also suggests that the Commission "clarify its policy" to permit use of international private line arrangements for the purpose of routing foreign-originated traffic to foreign points. "Comments in Support" of MCI's Petition for Declaratory Ruling, at 22, n. 17.

^{26/} "Comments in Support," in *Sprint Communications L.P.* (ISP-95-004), filed by AT&T on March 10, 1995.

markets to third countries is a legitimate transit service and growing market opportunity for U.S. carriers." AT&T suggests that carriers in the U.K. may wish to route traffic from other European destinations through the U.K. to the U.S.^{27/}. However, AT&T, apparently intent on further leveraging its dominant market share and its PTT relationships, also suggests imposition of unnecessary and anticompetitive requirements, such as that "consent of all carriers in the transport path be obtained."

AT&T's suggestion that "consent" of all carriers should be required (as opposed to permitting such routing if it is permissible under the laws of the applicable foreign jurisdiction) is not in the public interest because a such policy only would serve to entrench the market positions of established carriers. Requiring the "consent" of established carriers would hinder, rather than promote, the flexibility of new entrants to "piece together" cost-effective routes, because long-established dominant carriers, either separately, or through strategic partnerships and alliances, could oppose flexible routing by new entrants, even if such routing is permitted by the applicable foreign jurisdiction.

For example, AT&T, as a facilities-based carrier with established correspondent arrangements, could use its ISR authority and facilities in the U.K. to provide "transit" services to other countries. Such use of "hybrid" facilities by AT&T, while consistent with the S&B proposal for modifying the "points beyond" restriction, could, coupled with the "consent" requirement, permit AT&T to provide alternate "transit" routing, while preventing its new entrant competitors from providing or even using flexible routing, if carrier "consent" could not be obtained. AT&T's suggestion should be rejected, and the "points beyond" restriction should

^{27/} *Id.* at 20.

be lifted when the applicable laws and policies in the foreign jurisdiction permit such routing, irrespective of whether another carrier's "consent" to such routing is obtained. Instead of imposing such restrictions on non-dominant carriers restrict the activities of carriers with large (*i.e.*, 10%) U.S. market shares and that are allied with dominant carriers in the "equivalent" market or originating or terminating point. The Commission's policy limiting a carrier's ability to provide service beyond the equivalent foreign point is both unnecessary and unduly restrictive, and inhibits development of global telecommunications competition. To promote increased global competition and greater opportunities for U.S.-owned carriers operating in overseas markets, the Commission therefore should revise its current policy, and make clear that routing beyond equivalent countries will no longer be restricted. Permitting carriers to establish alternate routing arrangements through the U.K. actually should result in lower costs for service to EU countries by placing pressure on European administrations to reduce accounting rates with the United States to avoid traffic re-routing and the resulting possible loss of settlements revenue for directly routed traffic.^{28/} If the Commission authorizes routing via equivalent countries to third countries (where permitted by foreign law), U.S. carriers could establish themselves in foreign markets, and be in a position to take advantage of competitive opportunities as foreign markets liberalize within the next few years.

^{28/} See "Reply Comments of Cable & Wireless, Inc.," (filed August 12, 1994) concerning the supplemental filings of ACC Global (ITC-93-035) and MFS International (ITC-94-049) regarding their respective Section 214 applications to resell international private lines between the U.S. and the U.K.

Permitting "and beyond" routing through equivalent countries would create added incentive for countries to establish "equivalent" policies, and thereby reap the benefits of a Commission "equivalency" determination.

The Commission accurately recognized in its *International Resale Order* that encouraging the resale of international telecommunications services furthers the public interest by aligning prices for such services to cost, promoting more efficient use of international facilities, fostering new entry into the international telecommunications market, and exerting downward pressure on above-cost international accounting rates.^{29/} The Commission's current policy has been effective in assisting the U.S. government, and carriers, to exert leverage on closed foreign administrations to promote liberalization of foreign markets. Thus, it should not be discontinued, but it should be revised to increase leverage for encouraging opening of new market by applying only to the "first link" in international routing. Such a policy revision would permit equivalent countries to become "hubbing" locations for third country destined traffic, and would create added pressure for non-equivalent countries to revise their policies, because the ability of resellers to re-route traffic (perhaps under a different legal theory in each country) would permit greater opportunities to enter closed markets, and lead to development of greater end-to-end competition than the preservation of the status quo.

The Commission's current process for determining, on a country-specific basis, whether a country can be declared "equivalent" to the U.S. market currently is a valuable process, because it encourages carriers and the Commission to examine the fundamental principles necessary for increased telecommunications competition in a foreign market. To the extent that

^{29/} 7 see also ACC/Alanna 9 FCC Rcd 6240 (1994).

basic operational and regulatory factors, such as equivalent interconnection, cost-based circuit lease and access rates, numbering issues and other non-discrimination principles are established, the necessary preconditions for development of global competition are fostered by the Commission's equivalency process.

However, once equivalency is established to a particular foreign point, the Commission should not restrict routing to points beyond the initial equivalent foreign destination. For example, the Commission has made an equivalency determination for the U.K. market, and thus should not restrict routing beyond the United Kingdom. If a carrier takes traffic from the U.S. to the U.K. via private lines, and then, under U.K. law is permitted to switch such traffic to another country, the Commission should not prohibit that routing to an "and beyond" destination. If the equivalent foreign jurisdiction permits routing to "points beyond", then the Commission should not restrict such routing.

If Commission policies are revised to permit equivalent countries to serve as "hubs" for traffic to non-equivalent locations, pressure upon foreign administrations with above-cost accounting rates will increase, and consumers will benefit through lower prices. In addition, permitting more flexible routing will encourage reseller efforts to export their expertise abroad, and gain a foothold in emerging competitive foreign markets. The Commission should permit the reseller to determine the feasibility and legality of services offered through flexible routing arrangements. It should not matter to the Commission whether each link of a call originated in the United States and terminated via an equivalent country to points beyond is carried to various countries under the same or different legal/regulatory theories in each country, as long as the end to end call can be completed consistent with applicable law in each country. U.S. carriers

should be permitted to take advantage of opportunities to develop niche markets by putting together flexible routing arrangements beyond the equivalent country, and not be foreclosed from emerging opportunities in foreign markets by Commission policies.

An expanded Commission policy permitting routing beyond the initial equivalent location will bolster the development of "gateways" through liberalized foreign markets, and provides alternative routing possibilities to provide service to countries where "world alliance" or "strategic partnerships" might otherwise limit incentives to market opening.^{30/}

V. REMOVAL OF THE POINTS BEYOND RESTRICTION IS THE PROPER RESPONSE TO THE EVOLVING U.S. AND FOREIGN REGULATORY AND MARKET CONDITIONS.

As the Commission recognizes in the *NPRM*, Americans frequently work, travel, and make calls beyond this nation's borders, and they increasingly expect more efficient and affordable telecommunications services for both their domestic and international service needs.^{31/} While both domestic and foreign legal and regulatory policies for international telecommunications services continue to evolve, the Commission properly appreciates that:

Current policies based on the traditional correspondent services model may not adequately address questions of market access, undue discrimination and potential

^{30/} As other parties have advocated, this Commission should review the impact of AT&T's WorldPartner and Uniworld activities upon the development of competitive international telecommunications services, irrespective of whether AT&T's partners invest in AT&T itself, or in offshore ventures, or even merely agree to special joint marketing or particular foreign country "transiting" or other routing arrangements. The Commission should resist AT&T's effort to "have it both ways"--that is, limit scrutiny of its own partnerships, affiliates and subsidiaries, while taking aggressive steps to limit emerging global competition. While shifts in AT&T traffic volumes (though preferential arrangements with its partners, affiliates or subsidiaries) would have significant adverse impact, adoption of a policy that allows fledgling U.S. competitors to gain entry to offshore markets will assist development of global competition.

^{31/} *NPRM* at 10.